



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2017-0190]

Hours of Service of Drivers: Application for Exemption; Rail Delivery Services, Inc. (RDS)

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition; grant of application for exemption.

SUMMARY: FMCSA announces its decision to grant Rail Delivery Services, Inc. (RDS), an exemption from the logbook requirements for its drivers who may not meet all of the conditions for utilization of the 100 air-mile radius log book exemption. This exemption enables RDS' drivers who stay within the 100 air-mile radius, but may occasionally take more than 12 hours to return to their work-reporting location, from having to complete a daily record of duty status (RODS) on those days. Instead the drivers will at all times use an electronic logging device system called Geotab to track all hours-of-service (HOS) data including real-time vehicle locations. FMCSA has analyzed the exemption application and the public comments and has determined that the exemption, subject to the terms and conditions imposed, is likely to achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.

DATES: The exemption is applicable from 12:01 a.m., **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]** through 11:59 p.m., November 14, 2022.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Yager, Chief, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 614-942-6477. E-mail: MCPSD@dot.gov.

SUPPLEMENTARY INFORMATION:

Background

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews the safety analyses and the public comments, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reason for the grant or denial, and, if granted, the specific person or class of persons receiving the exemption, and the regulatory provision or provisions from which exemption is granted. The notice must also specify the effective period of the exemption (up to 5 years), and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

Request for Exemption

RDS is, according to its website at www.raildelivery.com, a “California-based intermodal trucking company moving freight, trailers and containers between railroads, ports, consignees and shippers, reliably and efficiently throughout California and adjacent states” (USDOT 520912). RDS believes that all of its drivers – approximately 100-120 – would operate under the terms of the requested exemption from the 12-hour limitation in the log-book exception in 49 CFR 395.1(e)(1).

On a weekly basis, RDS expects that about 15% of its drivers will return to their work reporting location more than 12 hours after coming on duty, due to waiting times at rail yards

and shipper locations, while still operating within the required 100 air-mile radius. The drivers who occasionally exceed the 12-hour limitation nearly always return to the terminal within 14 hours.

On average, less than 2% of RDS drivers exceed the daily 14-hour limit. If a CMV is operated beyond the 14th hour, the departments work diligently to determine whether the truck was over the HOS limits, or utilized for personal conveyance. In virtually all of these cases, owner-operators are using their vehicles for personal conveyance.

According to RDS, nearly all its drivers operate within a 70- to 80-mile radius of their home terminal. They are home every day and for the most part meet the exemption requirements of the 100 air-mile radius provision. Some of these drivers record their hours worked on an “exempt” log. Other drivers complete a grid log, even though they meet the 100 air-mile radius exemption. Both types of paper logs are time consuming for the drivers and the RDS Safety Department. For this reason, RDS has embarked on the use of system incorporating a vehicle recording device to accurately record all the drivers’ activities, including on-duty time, driving time, and total hours for the day.

This electronic system allows for accuracy and real-time follow up. RDS believes that with this system it is improving the safety of the motoring public by ensuring that the drivers do not falsify their log books or operate when they are tired. Additionally, proactive measures have been implemented by RDS to improve highway safety. RDS states that the use of a daily log book or an “exempt” log does not enable the carrier to monitor and respond to these events in real-time. Violations are discovered 12 to 24 hours later. However, with the electronic tracking system, all departments see the events in real-time and can respond immediately.

RDS believes that the use of the electronic system, along with its increased focus on driver training and education, goes beyond compliance with the Federal regulations. The system

has allowed and will continue to allow RDS to provide additional timely oversight of drivers and has improved, and will enable the company to enhance, safety and reduce fatigue.

Public Comments

On July 7, 2017, FMCSA published notice of this application and requested public comment (82 FR 31680). The Agency received 17 docket comments, 6 supporting the request, including those from the Intermodal Association of North America (IANA); Farruggio's Express; and California Multimodal, Inc. LLC. The Advocates for Highway and Auto Safety (Advocates) and others opposed the request.

Those in favor commented that RDS' implementation and use of fleet management and tracking devices provides robust functionality with instantaneous feedback, visibility and transparency that far exceeds the traditional, paper-based logbook its drivers are required to complete under the existing HOS rules (when not meeting the RODS exception in 49 CFR 395.1) and ELD mandate.

Commenters also noted that RDS' telematics provides management with immediate data on driving events and potentially unsafe driver behaviors, such as HOS violations, speeding, sudden braking, harsh cornering, and seatbelt usage, allowing the company to proactively manage driver safety, training and education; and quickly identify potential safety and/or non-compliance trends across the company. Addressing these safety matters before they become serious patterns and problems, promulgates and cultivate its safety culture on a real-time basis.

Advocates failed to see how the exemption would be necessary if RDS has implemented "the Geo Tab system [which] meets the requirements of the ELD rule." If RDS has implemented an ELD compliant system, there is no need for an exception from the present rule requiring drivers who fail to meet the 100-air mile radius exception as their RODS is automatically being recorded by the system and carrier.

All comments are available for review in the docket for this notice.

FMCSA Decision

FMCSA has evaluated RDS' application for exemption and the public comments and decided to grant the exemption. The Agency believes that RDS' overall safety program will likely enable it to achieve a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption (49 CFR 381.305(a)).

FMCSA believes that RDS' use of the Geotab 7 system, along with RDS' increased focus on driver training and education, goes beyond basic compliance with the Federal regulations. The electronic system will allow RDS to provide additional timely oversight of safety issues. FMCSA has therefore decided to grant the exemption, subject to the terms and conditions outlined below.

Terms and Conditions of the Exemption

Terms of the Exemption

RDS' drivers who stay within the 100 air-mile radius but may occasionally exceed the 12-hour limitation are exempt from having to complete a daily record of duty status (RODS) at those times if, at all times, their hours of service data is recorded by the Geotab system. The exemption is contingent upon RDS maintaining USDOT registration, minimum levels of public liability insurance, and not being subject to any "imminent hazard" or other out-of-service (OOS) order issued by FMCSA.

Drivers must have a copy of this exemption document or FMCSA-issued equivalent in their possession while operating under the terms of the exemption. The exemption document or FMCSA-issued equivalent must be presented to law enforcement officials upon request. RDS must have a "Satisfactory" safety rating with FMCSA, or be "unrated."

Period of the Exemption

This exemption from the requirements of 49 CFR 395.1(e)(1) is effective from 12:01 a.m., **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]** through 11:59 p.m., November 14, 2022.

Extent of the Exemption

This exemption is limited strictly to the provisions of 49 CFR 395.1(e)(1) (Short haul operations; 100 air-mile radius driver). These drivers must comply with all other applicable provisions of the FMCSRs.

Preemption

In accordance with 49 U.S.C. 31315(d), as implemented by 49 CFR 381.600, during the period this exemption is in effect, no State shall enforce any law or regulation applicable to interstate commerce that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption. States may, but are not required to, adopt the same exemption with respect to operations in intrastate commerce.

Notification to FMCSA

Under this exemption, RDS must notify FMCSA within 5 business days of any accident (as defined in 49 CFR 390.5), involving any of the motor carrier's drivers operating under the terms of this exemption. The notification must include the following information:

- (a) Identity of Exemption: "RDS"
- (b) Date of the accident,
- (c) City or town, and State, in which the accident occurred, or closest to the accident scene,
- (d) Driver's name and license number,
- (e) Co-driver's name and license number,

- (f) Vehicle number and State license number,
- (g) Number of individuals suffering physical injury,
- (h) Number of fatalities,
- (i) The police-reported cause of the accident,
- (j) Whether the driver was cited for violation of any traffic laws, motor carrier safety regulations, and
- (k) The total driving time and total on-duty time of the CMV driver prior to the accident.

Accident notifications shall be e-mailed to MCPSD@dot.gov.

Termination

FMCSA believes that RDS' drivers will continue to maintain their previous safety record while operating under this exemption. However, should problems occur, FMCSA will take all steps necessary to protect the public interest, including revocation or restriction of the exemption. FMCSA will immediately revoke or restrict the exemption for failure to comply with its terms and conditions.

Issued on: November 2, 2017

Daphne Y. Jefferson
Deputy Administrator

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